

**\*\*NOT FOR PRINTED PUBLICATION\*\***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

NIKYUS J. McMILLON,

Plaintiff,

v.

ANDREW SAUL,  
COMMISSIONER, SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

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CIVIL ACTION NO. 9:19-CV-00078-RC

**ORDER OVERRULING OBJECTIONS AND ACCEPTING  
REPORT AND RECOMMENDATIONS**

The Plaintiff requests judicial review of a final decision of the Commissioner of Social Security Administration with respect to his application for disability-based benefits. This matter has been referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge submitted a report recommending that the Commissioner's decision be affirmed. The court has considered the report and recommendation filed on November 10, 2020 (Doc. No. 22), and the Plaintiff's objections (Doc. No. 23).

McMillon's objections mimic his initial briefing to the court. Specifically, he claims that the ALJ erred in declining to recontact the consultative psychological examiner for clarification as to the extent of his mental limitations. McMillon claims that this error resulted in "Listing and RFC findings [that] are not based on substantial evidence and contain errors of law." (Doc. No. 23, p. 1.)

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* Fed. R. Civ. P. 72(b). After careful consideration, the court concludes that the objections are without merit because the magistrate judge properly found that the consultative examiner's relationship did not rise to the level of a treating source physician, and therefore, no legal error was committed in weighing her opinion or failing to recontact her for clarification. Accordingly, the court **ACCEPTS** the magistrate judge's recommendation, **OVERRULES** the Plaintiff's objections, and **AFFIRMS** the Commissioner's denial of benefits. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So ORDERED and SIGNED, Dec 10, 2020.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark  
Senior Judge